IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

DISTRICT:

CIVIL APPLICATION NO. 1912 OF 2005

IN

FIRST APPEAL (St.) NO. 41945 OF 1998

Office Notes,Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr. Arfan Sait for the Applicants.

None for the Respondents.

CORAM: S.B.DESHMUKH, J.

DATE : 21ST AUGUST,2006

P.C.:

Heard learned Counsel for the applicants.

2. The respondents have been served with the court notice as well as private notice from the learned Counsel appearing for the applicants. Despite service, none appears for the respondents.

3. One Smt. Sharda alias Rekha

Ramchandra Naik had filed a suit in the Bombay City Civil Court being Suit No. 5784 of 1969 against the respondents / defendants. This suit is dismissed by the learned Judge, City Civil Court, Bombay, by the judgment and decree passed on 21st September, 1998. The original Plaintiff, Smt. Sharda alias Rekha, filed first appeal in this Court on 14th December, 1998. At the time of filing of the first appeal, however, the certified copy of the decree was not filed. The certified copy of the decree was applied by the said Sharda on 25th September, 1998. It was supplied by the office of the learned City Civil Court on 17th November, 1998. However, it was in possession of the original plaintiff, Smt. Sharda alias Rekha.

4. The applicants, in this civil application, are the legal heirs of Smt. Sharda alias Rekha. The applicants have stated in the civil

application, that the appeal was filed by Smt. Sharda alias Rekha. The office of this Court, had raised, some objections. Smt. Sharda was suffering from paralysis and was bedridden. Ultimately, Smt. Sharda, the original plaintiff, died on 21st March, 2003. It is a categorical statement made by the present applicants that they were not aware regarding filing of the first appeal in this Court on 14th December, 1998 by Smt. Sharda alias Rekha. On perception, regarding pendency of this proceedings, in this Court, the applicants with the assistance of the learned advocate, had made an application for substitution of the legal heirs and, that is how, the applicants have been brought on record as legal representatives / legal heirs of the deceased Sharda alias Rekha. The certified copy, which was required to be filed by the appellant, was not filed and was in possession of the said Sharda alias Rekha, as noted

above.

5. The applicants, have ultimately, filed certified copy of the decree on 1st September, 2004. In this process the delay of about 5 years and 343 days, occurred in persuing the appeal in this Court.

6. As noted above, despite court service and private notice served through the advocate appearing on behalf of the applicants, none appears for the respondents. There is no reply affidavit, controverting the allegations made in the civil application, filed on the record. The cause, therefore, of the death of Sharda, as alleged in the civil application, accepted by this Court by allowing the application for substitution. The claim of the applicants, that they were not aware regarding pendency of this appeal in this Court, seems to be just and proper, in the facts and circumstances

of the present case. The first appeal was filed on 14th December, 1998. The objection, was only regarding filing of the certified copy of the impugned decree.

7. Having heard the learned Counsel for the applicants and on perusal of the material made available, by way of affidavit of the applicants, in my view, delay is properly explained. The suit filed in the trial Court, was terminated by dismissal on 21st September, 1998. Allowing this civil application, at this stage, is likely to cause inconvenience to the respondents, though they have not entered appearance in this civil application. While considering the delay occurred, the applicants can be put to costs, payable to the respondents.

8. In this view of the matter, the delay of 5 years and 343 days, caused in filing the first appeal, stands

condoned subject to payment of costs of Rs.2,000/- by the applicants within a period of eight weeks from today. The amount of costs to be deposited in this Court, within a period of eight weeks from today, and is made a condition precedent.

9. The civil application, accordingly, is allowed and disposed of.

Sd/-

(S.B.DESHMUKH, J.)